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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF EASTERN WASHINGTON

THE GOLDFIELD CORPORATION,	)	NO. 2:21-cv-301
a Delaware Corporation,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	
vs.	)	
	)	
RONALD F. NIXON and JANE DOE	)	
NIXON, individuals and a marital	)	
community comprised thereof,	)	
	)	
Defendants.	)	

Plaintiff by and through its attorneys of record, Dunn & Black, P.S., alleges  
as follows:

**PARTIES, JURISDICTION, & VENUE**

1. Plaintiff, The Goldfield Corporation (“Goldfield”), is a Delaware corporation with its principal place of business in Florida. Goldfield previously

COMPLAINT - 1

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1 owned and operated the Sierra Zinc Mine and Mill ("Site"). The Site covers  
2 approximately 190 acres including portions of the SW ¼ and NW ¼ of Section 20,  
3 Township 38, Range 41 Willamette Meridian and the SE ¼ and SW ¼ of Section  
4 17, Township 38, Range 41, Willamette Meridian, Stevens County, Washington. It  
5 is located approximately 24 miles north of Colville, and 17 miles south of  
6 Northport, on Goldfield Mine Road, in Stevens County, Washington.

8 2. Defendant Ronald F. Nixon and Jane Doe Nixon (collectively  
9 "Nixon"), individuals and comprising a marital community, are Washington  
10 residents residing in Stevens County, Washington. Upon information and belief,  
11 Nixon purchased certain portions of the Site from American Trading & Exchange  
12 Corporation, formerly known as Tri-Nite Mining Company by Statutory Warranty  
13 Deed in 1989.

16 3. Diversity exists between Goldfield and Nixon, and Goldfield's claims  
17 are for the equitable relief of specific performance or in the alternative damages in  
18 excess of \$75,000 exclusive of interest, costs, and attorney fees. Therefore, the  
19 Court has proper jurisdiction pursuant to 28 U.S.C. § 1332.

21 4. Plaintiff Goldfield's alternative remedy seeks damages for  
22 contribution under 42 U.S.C. § 9613(f) for costs Goldfield incurred pursuant to an  
23 Administrative Settlement Agreement and Order on Consent for Removal Action  
24 entered into between Goldfield and the United States Environmental Protection  
25

1 Agency (“EPA”) pursuant to the Comprehensive Environmental Response,  
2 Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9622  
3 (“CERCLA”). Therefore, the Court also has proper jurisdiction pursuant to 28  
4 U.S.C. § 1331.

5  
6 5. Nixon resides in Stevens County, Washington which is located within  
7 the Eastern District of Washington. Therefore, venue is proper pursuant to 28  
8 U.S.C. § 1391.

9  
10 **FACTS**

11 6. Goldfield realleges and incorporates by reference all preceding  
12 allegations as if fully stated herein.

13 7. The Site is a former lead-zinc mine and mill.

14 8. Upon information and belief, mining and milling operations at the Site  
15 began in approximately 1889.

16 9. Upon information and belief, the Site was owned and operated by the  
17 Sierra Zinc Company from approximately 1940 to 1944.

18 10. Goldfield purchased the Site in approximately 1948 and operated it  
19 until selling the Site in approximately 1960.

20 11. Upon information and belief, mining and milling activities continued  
21 at the Site by various entities after Goldfield sold it in 1960 until at least the mid to  
22 late 1970s.

23  
24  
25  
26 COMPLAINT - 3

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1           12. Upon information and belief, Nixon purchased large portions of the  
2 Site in 1989.

3           13. The EPA first investigated the Site in 2001 as part of an evaluation of  
4 several former mine sites within the Upper Columbia River area.

5           14. The EPA conducted a second site investigation during July 2013.

6           15. Soil samples taken during the second site investigation indicated the  
7 presence of heavy metals including arsenic, cadmium, lead, mercury, thallium, and  
8 zinc.  
9

10           16. The EPA determined that some heavy metals were present at  
11 concentrations that may present risks to human health and the environment.  
12

13           17. In 2014, Goldfield entered into an Administrative Settlement  
14 Agreement and Order on Consent for Removal Action (“AOC”) with the EPA  
15 pursuant to CERCLA, Docket No. 10-201400168.  
16

17           18. In approximately June 2014, Goldfield entered into an Access  
18 Agreement with Nixon to provide access to Goldfield so that it could implement  
19 the removal action and other remedial actions, including placement of a soil cover,  
20 contemplated by the AOC (collectively, “Removal Action”). A copy of the Access  
21 Agreement is attached hereto as **Addendum 1** and expressly incorporated herein.  
22

23           19. The Access Agreement identified specific work that was required to  
24 be performed pursuant to the Removal Action.  
25

26 COMPLAINT - 4

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1           20. The Access Agreement also provided that the EPA may require the  
2 execution and recordation of an environmental covenant affecting certain areas of  
3 the Site owned by Nixon (“Environmental Covenant”).

4           21. Pursuant to the express provisions of the Access Agreement,  
5 Goldfield agreed to perform and bear all costs associated with the Removal Action  
6 required by the AOC, conditioned upon Nixon granting access to the Site,  
7 providing use of borrow material from the Site, and agreeing to execute and record  
8 any Environmental Covenant required by the EPA.  
9

10           22. Goldfield completed the Removal Action in 2015, which consisted  
11 generally of demolition of the mill and barn buildings, removal of approximately  
12 86,000 cubic yards of lead-contaminated soils from various locations outside of the  
13 tailings impoundment, placement of excavated lead contaminated soils within the  
14 tailings impoundment, re-contouring the tailings impoundment, placement of an  
15 ecological barrier and clean cover soils on the tailings impoundment, and  
16 revegetation of the covered tailings impoundment. Excavated areas were  
17 backfilled and/or graded to blend in with surrounding terrain. Some tailings in  
18 heavily treed areas were left in place and covered to the maximum extent possible  
19 while leaving surrounding trees intact.  
20

21           23. In total, Goldfield incurred costs of approximately \$2,683,192.68 to  
22 perform the work associated with the Removal Action.  
23

1        24. Goldfield has conducted periodic compliance monitoring and  
2 inspections since completion of the Removal Action and provided reports to,  
3 among others, the EPA regarding such monitoring and inspections.

4        25. On or about September 8, 2021, the EPA directed Goldfield to obtain  
5 and record the required Environmental Covenant for the Site as part of Goldfield's  
6 continuing obligations under the AOC. A copy of the EPA's directive is attached  
7 hereto as **Addendum 2** and expressly incorporated herein.  
8

9        26. Goldfield has subsequently demanded that Nixon execute the  
10 Environmental Covenant and return such executed Environmental Covenant, so  
11 that it can be recorded pursuant to the express terms of the Access Agreement. A  
12 copy of the required Environmental Covenant is attached hereto as **Addendum 3**  
13 and expressly incorporated herein.  
14

15        27. Nixon has breached the Access Agreement by refusing to execute and  
16 allow the Environmental Covenant demanded by the EPA to be recorded.  
17

18                    **FIRST CAUSE OF ACTION**  
19                    **(Breach of Contract)**

20        28. Goldfield realleges and incorporates by reference all preceding  
21 allegations as if fully stated herein.  
22

23        29. Goldfield and Nixon entered into the Access Agreement.

24        30. Goldfield fully performed all obligations pursuant to the Access  
25 Agreement.  
26

COMPLAINT - 6

1           31. Nixon has refused to perform, as required by the express terms of the  
2 Access Agreement, despite Goldfield's demand.

3           32. Nixon's refusal to perform under the express terms of the Access  
4 Agreement will directly and proximately cause Goldfield to suffer substantial  
5 harm.  
6

7           33. The obligations under the Access Agreement are unique, requiring the  
8 parties to perform specific obligations and the failure to perform such obligations  
9 cannot be adequately addressed through award of monetary damages. Therefore,  
10 specific performance is the appropriate remedy for Goldfield as a result of Nixon's  
11 breach of contract, in addition to all other remedies available to Goldfield,  
12 including without limitation, an award of contractual attorneys' fees.  
13

14           34. Alternatively, Goldfield is entitled to contribution in an amount to be  
15 proven at trial pursuant to 42 U.S.C. § 9613(f), damages for any additional costs  
16 Goldfield incurs with regard to the EPA as a result of Nixon's breach, interest,  
17 attorneys' fees, and costs.  
18

19  
20 **PRAYER FOR RELIEF**

21           WHEREFORE, The Goldfield Corporation prays for the following relief:

22           1. For specific performance requiring Defendant Ronald F. Nixon to  
23 execute the Environmental Covenant, before a notary public, and deliver the same  
24

1 to the State of Washington, Department of Ecology for countersignature and filing  
2 with the Stevens County Auditor's Office;

3 2. For attorneys' fees and costs, as provided by contract and applicable  
4 law;

5  
6 3. Alternatively, for judgment against Defendants in an amount to be  
7 proven at trial;

8 4. For interest provided by applicable law; and

9  
10 5. For further relief the Court deems just and equitable.

11  
12 DATED this 20<sup>th</sup> day of October, 2021.

13 DUNN & BLACK, P.S.

14  
15 /s/ Richard T. Wetmore

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23  
24 *Attorneys for Plaintiff*